

EDMUND G. BROWN JR., Attorney General  
of the State of California  
JOSE R. GUERRERO, State Bar No. 97276  
Supervising Deputy Attorney General  
CATHERINE E. SANTILLAN  
Senior Legal Analyst  
California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-5579  
Facsimile: (415) 703-5480

Attorneys for Complainant

**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2069

WALDO ELIAS MERY  
2105 Coddine Drive  
Modesto CA 95350

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 5451

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 28, 1985, the Respiratory Care Board issued respiratory care practitioner license Number 5451 to Waldo Elias Mery (Respondent). The respiratory care practitioner license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2008, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2           4.       Section 3710 of the Code states: “The Respiratory Care Board of  
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
4 8.3, the Respiratory Care Practice Act].”

5           5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7           6.       Section 3750 of the Code states:

8           “The board may order the denial, suspension or revocation of, or the imposition of  
9 probationary conditions upon, a license issued under this chapter, for any of the following  
10 causes:

11           “(d) Conviction of a crime that substantially relates to the qualifications,  
12 functions, or duties of a respiratory care practitioner. The record of conviction or a  
13 certified copy thereof shall be conclusive evidence of the conviction.

14           “(g) Conviction of a violation of any of the provisions of this chapter or of any  
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
17 violate any provision or term of this chapter or of any provision of Division 2  
18 (commencing with Section 500).

19           7.       Section 3752 of the Code states:

20           “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
21 made to a charge of any offense which substantially relates to the qualifications,  
22 functions, or duties of a respiratory care practitioner is deemed to be a conviction within  
23 the meaning of this article. The board shall order the license suspended or revoked, or  
24 may decline to issue a license, when the time for appeal has elapsed, or the judgment of  
25 conviction has been affirmed on appeal or when an order granting probation is made  
26 suspending the imposition of sentence, irrespective of a subsequent order under Section  
27 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
28 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the

1 accusation, information, or indictment.”

2 8. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
4 shall be considered to be substantially related to the qualifications, functions or duties of  
5 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
6 perform the functions authorized by his or her license or in a manner inconsistent with the  
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
8 those involving the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
10 abetting the violation of or conspiring to violate any provision or term of the Act.

11 “(c) Conviction of a crime involving driving under the influence or reckless  
12 driving while under the influence.”

### 13 COST RECOVERY

14 9. Section 3753.5, subdivision (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the board,  
16 the board or the administrative law judge may direct any practitioner or applicant found to have  
17 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
18 investigation and prosecution of the case."

19 10. Section 3753.7 of the Code states:

20 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
21 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
22 administrative, filing, and service fees."

23 11. Section 3753.1 of the Code states:

24 "(a) An administrative disciplinary decision imposing terms of probation may  
25 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
26 associated with monitoring the probation. "

1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction)

3 12. Respondent is subject to disciplinary action under Business & Professions  
4 code sections 3750(d) and (g), 3752 [substantially related conviction], and CCR 1399.370(c).  
5 The circumstances are as follows:

6 13. On or about August 17, 2006, Ripon Police Officer Robert Winget  
7 observed a driver (later identified as respondent by his driver's license) traveling in excess of 85  
8 miles per hour, which was above the posted speed limit. Officer Winget activated his emergency  
9 lights to make a traffic stop, but the respondent continued to accelerate in excess of 90 miles per  
10 hour. Officer Winget was in a clearly marked police unit, sounded his siren and had all  
11 emergency lights activated. Respondent drove in excess of 100 miles per hour and was tracked  
12 by radar at 102 miles per hour. Officer Winget was not catching up to respondent's vehicle and  
13 after pacing him for over 2.5 miles, he called for back-up. At that point, respondent slowed his  
14 vehicle's speed and stopped on the shoulder of the road, about 3.1 miles from the initial point at  
15 which Officer Winget began his pursuit.

16 A. Officer Winget approached respondent's vehicle and asked him to turn off  
17 the engine and exit the vehicle. At first, respondent refused and stated that he was going to the  
18 emergency room at the hospital to see his daughter. When Officer Winget asked which hospital  
19 and inquired as to what was the emergency, respondent told him that it was none of his business.  
20 He refused to exit the vehicle when asked a second time. Officer Winget said that if respondent  
21 did not get out of the car, the Officer would use force to get him out. Respondent then got out of  
22 his car. Officer Winget noticed that respondent's speech was slurred and he appeared to be  
23 intoxicated. Respondent refused to reply when asked if he had been drinking, refused to perform  
24 field sobriety tests, and refused the preliminary alcohol screening (PAS) test. He also refused to  
25 respond verbally to the Miranda warnings.

26 B. Officer Winget arrested respondent for violating Vehicle Code section  
27 23152(a), driving under the influence of alcohol, and he was taken to San Joaquin County  
28 Hospital for a blood test. The sample was drawn at 7:44 p.m., and the evidence was retained.

1 C. Respondent was transported to San Joaquin County Jail and booked for  
2 violations of Vehicle Code section 23152(a) [driving under the influence of alcohol], Vehicle  
3 Code section 2800.1(a)(1) [evading the police in a marked unit], Vehicle Code section 22348(b)  
4 [exceeding 100 miles per hour], and Vehicle Code section 23103(a) [exceeding maximum speed  
5 limit on the freeway by 30 miles per hour].

6 14. On August 31, 2006, a criminal complaint was filed. On December 12,  
7 2006, an Amended Complaint in *People of the State of California vs. Waldo Elias Mery*, case  
8 no. MM113269A was filed in Superior Court, San Joaquin County. Count 1 charged respondent  
9 with a violation of Vehicle Code section 23152(a) [driving under the influence of alcohol], Count  
10 2 charged a violation of Vehicle Code section 23152(b) [driving with a blood alcohol level above  
11 .08%], Count 3 charged a violation of Vehicle Code section 2800.1 [evading the police in a  
12 marked unit], Count 4 charged a violation of Vehicle Code section 23103, [reckless driving],  
13 Allegation 1 was added: a violation of Vehicle Code section 23582 [exceeding maximum speed  
14 limit on the freeway by 30 miles per hour], Count 5 charged a violation of Vehicle Code section  
15 22350 [unsafe speed for prevailing conditions].

16 15. On January 10, 2007, respondent entered a plea of guilty to counts 2 and 3.  
17 The Court accepted the plea, and the District Attorney dismissed the other charges in the interests  
18 of justice. The Judge granted a conditional sentence for three years as to counts 2 and 3.  
19 Respondent was ordered to participate in a treatment program approved by the probation officer  
20 and to report for said program within 21 days. His blood alcohol content was noted to be .13% at  
21 the time of arrest. He was ordered not to drink and drive with any measurable amount of alcohol  
22 or drugs in his blood, submit to testing, pay fines totalling \$2,323.00, serve 10 days in jail with  
23 credit for 2 days served, and alternate work program was approved.

24 16. Therefore, respondent's license is subject to discipline based on his  
25 conviction of violations of Vehicle Code section 23152(b) [driving with a blood alcohol level  
26 above .08%] and Vehicle Code section 2800.1 [evading the police in a marked unit].

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